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**Datasheet for the decision  
of 2 October 2018**

**Case Number:** T 0520/13 - 3.5.01

**Application Number:** 08154799.4

**Publication Number:** 2088551

**IPC:** G06Q30/00, H04M1/725, H04M1/247

**Language of the proceedings:** EN

**Title of invention:**

Providing relevant advertisements or other content based on a communications identifier

**Applicant:**

Microsoft Technology Licensing, LLC

**Headword:**

Advertisement selection / MICROSOFT

**Relevant legal provisions:**

EPC Art. 56

**Keyword:**

Inventive step - providing targeted advertising based on the user's state (no - not technical) - selecting an advertisement locally at the client device (no - obvious trade off)

**Decisions cited:**

T 0641/00



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Case Number: T 0520/13 - 3.5.01

**D E C I S I O N**  
**of Technical Board of Appeal 3.5.01**  
**of 2 October 2018**

**Appellant:** Microsoft Technology Licensing, LLC  
(Applicant) One Microsoft Way  
Redmond, WA 98052 (US)

**Representative:** Grünecker Patent- und Rechtsanwälte  
PartG mbB  
Leopoldstraße 4  
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**Decision under appeal:** Decision of the Examining Division of the  
European Patent Office posted on 1 October 2012  
refusing European patent application No.  
08154799.4 pursuant to Article 97(2) EPC.

**Composition of the Board:**

**Chairman** W. Chandler  
**Members:** A. Wahrenberg  
P. Schmitz

## **Summary of Facts and Submissions**

- I. The appeal is against the decision of the examining division to refuse the European patent application No. 08154799.4.
- II. The examining division found that the subject-matter of claim 1 of the main request lacked novelty over D1 (WO 02/03672 A1). The subject-matter of claim 1 of the first, second, and third auxiliary requests was found to lack an inventive step over the same document.
- III. In the statement setting out the grounds of appeal, the appellant requested that the decision to refuse the application be set aside and that a patent be granted on the basis of one of the requests rejected by the examining division.
- IV. The Board's preliminary view, set out in a communication accompanying a summons to oral proceedings, was that, on a broad interpretation, the subject-matter of claim 1 of the main request lacked novelty over D1. Interpreted in the light of the description, the invention in claim 1 of the main request was seen as an obvious implementation of a non-technical advertising scheme, and therefore not inventive. The subject-matter of claim 1 of the three auxiliary requests was considered to lack an inventive step for the same reasons.
- V. In a reply to the Board's communication dated 2 August 2018, the appellant filed a new main request and a new auxiliary request 1.

VI. Oral proceedings took place with the appellant in attendance. The appellant's final request was that the decision under appeal be set aside and that a patent be granted on the basis of the main request or auxiliary 1 filed with the letter of 2 August 2018.

VII. Claim 1 of the main request reads:

*A method in a data communications environment, the method comprising:*

*receiving (502), at an intermediary (106; 224), from an initiating device (102; 222) an identifier corresponding to a communication; and*

*using the identifier to select content associated with the identifier, the content corresponding to visible information or an audible advertisement, or a combination of visible information and an audible advertisement, the content being for output on the initiating device (102; 222) or a target device (104; 222) of said communication, wherein selecting the content comprises:*

*selecting candidate content at the intermediary based on the identifier using profile data,*

*caching the candidate content in a data store (220) of the initiating device or the target device, respectively, and*

*using state data at the initiating device or the target device, respectively, to select the content for output on the initiating device or the target device from among the cached candidate content, the state data comprising at least one of a current time, a current user location and a user traveling direction; and*

*presenting the selected content for output to the user by outputting the selected content on the initiating device or the target device, respectively.*

VIII. The first auxiliary request adds to the main request the text *"and updating the cached candidate content by synchronizing the cached candidate content with a remote source of the content,"* at the end of the "caching"-feature in claim 1.

## **Reasons for the Decision**

### 1. *The invention*

1.1 The invention concerns selecting an advertisement (or some other audible or visible content) to be presented to a user, based on a user profile and "state data". Contrary to what one might expect, the term "state" has nothing to do with sovereignty or governance. Nor does it refer to the internal condition of some machine. It means the current time, the user's current location, or the user's travelling direction.

### 2. *Main request, claim 1*

2.1 Claim 1 of the main request is very broad and general, and it is not immediately apparent what it is meant to cover. During the oral proceedings before the Board, the appellant gave the following explanation of the invention, which falls under the terms of claim 1.

The user has a communication device, for example, but not limited to, a mobile phone, that can display or play back an advertisement. There is also an "intermediary", for example a telephone service provider, that receives an "identifier" (a telephone number) when the user initiates or receives a communication. In a first step, the intermediary

selects one or more advertisements, based on the identifier and a user profile, and sends those advertisements to the user's communication device where they are cached in a data store. At some later time, a second selection of an advertisement takes place in the user's communication device based on the current time, or the user's location or travelling direction. This is the final advertisement that is presented to the user.

3. *Main request, inventive step*

3.1 D1 discloses the first selection by the intermediary based on profile data. It does not disclose the second selection from the local data store based on state data comprising at least one of a current time, a user's location, and the user's travelling direction.

3.2 The Board agrees with the examining division that the selection of an advertisement based on such state data as defined in claim 1 is not technical. Therefore, this is part of the technical problem in the form of a requirement specification that the skilled person has to implement (see T 641/00 - Two identities/COMVIK). The question that remains is whether the technical implementation would have been obvious.

3.3 The appellant argued that the claimed two-step selection in claim 1 had the effect that the selected content could be provided at an appropriate time. Providing the final content from the local cache, rather than obtaining it from the remote intermediary, reduced latency, which was important for the timing.

3.4 The Board agrees with the appellant that latency is a technical issue in client-server systems. However, as the examining division pointed out in its decision, the

question of whether to process data locally or centrally is the sort of trade-off that the skilled person routinely deals with. It is well known that local processing reduces latency, but requires more storage space and processing capabilities in the client device. Conversely, central processing has more latency but allows for a relatively simple client. In the Board's view, the skilled person would choose an appropriate solution, based on the circumstances, without inventive effort.

3.5 The appellant argued that it would not have been obvious at the priority date in February 2008 to perform the selection locally, in a mobile device, because, at that time, mobile phones were not smart.

3.6 The Board is not persuaded, not least because the claimed subject-matter is not limited to a mobile phone. It covers a phone appliance such as the one disclosed in D1, which includes storage and performs smart functions (see for example, page 12, third paragraph; and the two last paragraphs on page 14). It would have been a routine effort for the skilled person to implement an advertisement selection based on, for example the current time, on the phone appliance in D1.

3.7 For these reasons, the Board concludes that the subject-matter of claim 1 lacks an inventive step (Article 56 EPC).

4. *Auxiliary request 1*

4.1 Claim 1 of the first auxiliary request includes the step of updating the cache by synchronising it with a remote source. The remote source is not specified. It could be the intermediary, or some other entity.



4.2 It is clear that this does not add anything inventive over the main request, because if the requirement is to provide up-to-date content to the user, it is evident that the cache will have to be updated. Indeed, the appellant agreed that the cache synchronisation was not part of the inventive concept.

4.3 Therefore, the Board finds that the subject-matter of claim 1 of the first auxiliary request lacks an inventive step (Article 56 EPC).

## Order

### **For these reasons it is decided that:**

The appeal is dismissed.

The Registrar:

The Chairman:



T. Buschek

W. Chandler

Decision electronically authenticated